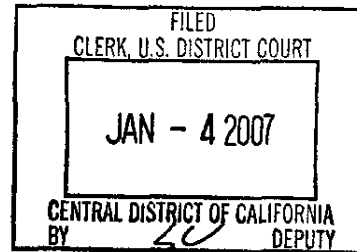
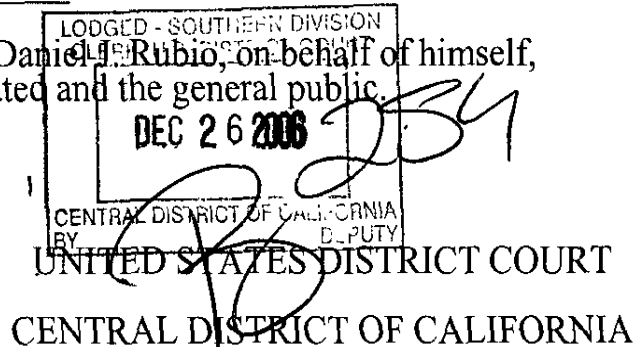


JAMES M. TRUSH (SBN 140088)  
 TRUSH LAW OFFICE  
 695 Town Center Drive, Suite 700  
 Costa Mesa, CA 92626  
 Phone (714) 384-6390; Fax (714) 384-6391  
 Email: [jtrush@earthlink.net](mailto:jtrush@earthlink.net)

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Kevin T. Barnes, Esq. (#138477)  
 Gregg Lander, Esq. (#194018)  
 LAW OFFICES OF KEVIN T. BARNES  
 5670 Wilshire Boulevard, Suite 1460  
 Los Angeles, California 90036  
 Phone: (323) 549-9100; Fax: (323) 549-0101  
 Email: [barnes@kbarnes.com](mailto:barnes@kbarnes.com)

Attorneys for Plaintiff, Daniel J. Rubio, on behalf of himself,  
 all others similarly situated and the general public.



DANIEL J. RUBIO, on behalf of  
 himself, all others similarly situated,  
 and the general public,

Plaintiff,

vs.

NEW CENTURY MORTGAGE  
 CORPORATION, a California  
 corporation; and DOES 1 through  
 100, inclusive,

Defendants.

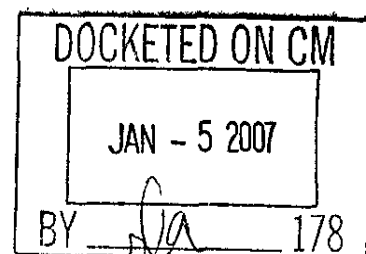
CASE NO. CV06-811 CJC (AJWx)

Judge: Hon. Cormac J. Carney Crtrm: 9B  
 [CLASS ACTION]

**STIPULATION TO ALLOW FILING  
 OF PLAINTIFFS' FOURTH  
 AMENDED COMPLAINT, ORDER  
 THEREON**

Complaint filed: March 21, 2005  
 Removal Date: August 29, 2006  
 Trial Date: None set

**THE PARTIES HEREBY STIPULATE** by and through their respective counsel of  
 record, as follows:



1           1.     On November 29, 2006, the Court issued its Order striking the punitive  
2 damages allegations in Plaintiff's third amended complaint.

3           2.     In connection with filing an amended pleading, Plaintiff has proposed that the  
4 fourth amended complaint include two additional class representatives, who are individuals  
5 that worked for Defendant in two of its branch locations.

6           3.     The fourth amended complaint deletes the punitive damages allegations as a  
7 result of the Order of this Court on November 29, 2006. The fourth amended complaint  
8 also adds John Hicks and David Vizcarra as additional class representatives.

9           4.     Plaintiff has conducted significant discovery and investigation. It has been  
10 determined that the putative class member loan officers were employed in both the central  
11 operations and the branch locations operated by Defendant in the State of California.  
12 Plaintiff Daniel Rubio was employed in the central operations only. John Hicks was  
13 employed in both the central operations and the Long Beach branch location.  
14 David Vizcarra was employed at the Sacramento branch location. Plaintiff believes that it is  
15 appropriate and in the interest of justice to add John Hicks and David Vizcarra as additional  
16 class representatives.

17          5.     Defendant stipulates and agrees to the filing of the fourth amended complaint  
18 attached hereto as **Exhibit A** and incorporated herein by reference, which deletes the  
19 punitive damages allegations as a result of the Order of this Court on November 29, 2006,  
20 and which also adds John Hicks and David Vizcarra as additional class representatives.

21 //

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23 //

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28 //

1        6.     The parties, by and through their counsel of record, hereby stipulate and agree  
2 that Plaintiffs be granted leave to file a fourth amended complaint, which is attached hereto  
3 as **Exhibit A** and is incorporated herein by reference, and that Defendant is to file is  
4 responsive pleading twenty (20) days thereafter.

5  
6 DATED: December 20, 2006     **TRUSH LAW OFFICE**

7  
8  
9 By: 

10 James M. Trush, attorney for Plaintiff,  
11 DANIEL J. RUBIO, on behalf of himself, all  
12 others similarly situated, and the general  
13 public

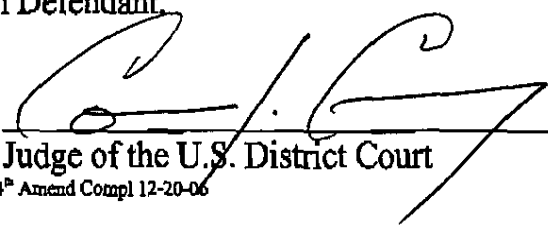
14 DATED: December 21, 2006     **SHEPPARD MULLIN RICHTER &  
15 HAMPTON, LLP**

16  
17 By: 

18 Jason W. Kearnaghan, Esq., attorneys for  
19 Defendant, NEW CENTURY MORTGAGE  
20 CORPORATION

21 **ORDER**

22        Upon reading the Stipulation of the Parties, and good cause appearing  
23 therefore, **IT IS HEREBY ORDERED**, that Plaintiffs' fourth amended complaint attached  
24 hereto as Exhibit A is ordered filed and served as of the date of the signing of this Order and  
25 that Defendant shall file and serve its responsive pleading within twenty (20) days of  
26 service of this Order upon Defendant.

27 Dated: 12/27/06 

28 Judge of the U.S. District Court

M:\Rubio\Fld\US District Court\Stip to file 4<sup>th</sup> Amend Compl 12-20-06

EXHIBIT A

Kevin T. Barnes, Esq. (#138477)  
 Gregg Lander, Esq. (#194018)  
 LAW OFFICES OF KEVIN T. BARNES  
 5670 Wilshire Boulevard, Suite 1460  
 Los Angeles, CA 90036-5627  
 Tel.: (323) 549-9100 / Fax: (323) 549-0101  
 Email: Barnes@kbarnes.com

James M. Trush, Esq. (#140088)  
 TRUSH LAW OFFICE  
 695 Town Center Drive, Suite 700  
 Costa Mesa, CA 92626-7187  
 Tel.: (714) 384-6390 / Fax: (714) 384-6391  
 Email: JTrush@earthlink.net

Attorneys for Plaintiffs, DANIEL J. RUBIO, JOHN HICKS and DAVID VIZCARRA, on behalf of themselves, all others similarly situated, and the general public

# UNITED STATES DISTRICT COURT

## CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

DANIEL J. RUBIO, JOHN HICKS  
 and DAVID VIZCARRA, on behalf  
 of themselves, all others similarly  
 situated, and the general public,

Plaintiffs,

vs.

NEW CENTURY MORTGAGE  
 CORPORATION, a California  
 corporation; and DOES 1 through  
 100, inclusive,

Defendants.

Case No.: SACV06-811 CJC (AJWx)

Dept.: C64

Honorable Cormac J. Carney

### CLASS ACTION

### FOURTH AMENDED COMPLAINT FOR:

1. RECOVERY OF UNPAID OVERTIME WAGES;
2. FAILURE TO PAY OVERTIME WAGES PURSUANT TO THE FLISA;
3. FAILURE TO PROVIDE MEAL PERIODS;
4. FAILURE TO PROVIDE PAID REST PERIODS;
5. ILLEGAL DEDUCTIONS;
6. ILLEGAL RECORD KEEPING;
7. VIOLATIONS OF LABOR CODE §203; AND
8. UNFAIR BUSINESS PRACTICES

DEMAND FOR JURY TRIAL

///

1 Plaintiffs DANIEL J. RUBIO, JOHN HICKS and DAVID VIZCARRA, on behalf of  
 2 themselves, all others similarly situated and the general public (hereinafter referred to as  
 3 "Plaintiffs"), hereby file this Complaint against Defendants NEW CENTURY  
 4 MORTGAGE CORPORATION, a California corporation, and DOES 1 to 100 (hereinafter  
 5 collectively referred to as "Defendants" or "New Century"). Plaintiffs are informed and  
 6 believe, and on the basis of that information and belief, allege as follows:

7 I.

8 **INTRODUCTION**

9 1. This is a civil action seeking recovery of unpaid monies, wages and penalties  
 10 for Defendants' violations of California Labor Code ("Labor Code") §§1194, et seq., Labor  
 11 Code §§200, et seq., California Business and Professions Code ("B&PC") §§17000, et seq.  
 12 and 17200, et seq., Wage Orders issued by the California Industrial Welfare Commission  
 13 (hereinafter, "Wage Orders"), the Fair Labor Standards Act, 29 USC §§207, et seq. and  
 14 related common law principles.

15 2. Plaintiffs' action seeks monetary damages, including full restitution from  
 16 Defendants as a result of Defendants' unlawful, fraudulent and unfair business practices.

17 3. Plaintiffs will request the Court provide notice of this class action regarding  
 18 California state law overtime compensation and unfair practices pursuant to FRCP 23(c)(2).

19 4. The acts complained of herein occurred, occur and will occur, at least in part,  
 20 within the time period from four (4) years preceding the filing of the original Complaint  
 21 herein, up to and through the time of trial for this matter.

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24 ///

1 RELEVANT JOB TITLES

2 5. The relevant job titles in this action are Defendants' California-based "Loan  
3 Officer" positions (hereinafter including any of Defendants' job positions with substantially  
4 similar titles and duties, including but not limited to "Loan Advisors").

5 6. Any differences in the job activities, obligations and/or responsibilities among  
6 the different individuals in Defendants' Loan Officer positions were and are legally  
7 insignificant to the issues presented by this action.

8 SUMMARY OF CLAIMS

9 7. With regard to the Loan Officers, Defendants have:

- 10 a. Imposed a policy and practice in which Loan Officers are paid for a  
11 maximum of 8 hours per day, even though they are required and expected to  
12 work more hours;
- 13 b. Imposed a policy and practice in which Loan Officers are paid for a  
14 maximum of 40 hours per week, even though they are required and  
15 expected to work more hours;
- 16 c. Failed to pay overtime pay for all overtime hours worked;
- 17 d. Failed to provide meal periods;
- 18 e. Failed to provide paid rest periods;
- 19 f. Taken illegal deductions from bonuses and/or commissions;
- 20 g. Kept records in an illegal manner;
- 21 h. Violated Labor Code §203; and
- 22 i. Conducted unfair business practices.

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II.

PARTIES

PLAINTIFF DANIEL J. RUBIO

8. Plaintiff DANIEL J. RUBIO is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a resident of the State of California.

9. Plaintiff DANIEL J. RUBIO has worked for Defendants as a California-based Loan Officer at a New Century office in Orange County, California.

10. Plaintiff DANIEL J. RUBIO seeks unpaid wages, penalties and other compensation from Defendants because Defendants improperly:

- a. Failed to pay Plaintiff DANIEL J. RUBIO overtime pay for all overtime hours worked;
- b. Deprived Plaintiff DANIEL J. RUBIO of the requisite meal periods;
- c. Failed to authorize and permit Plaintiff DANIEL J. RUBIO the requisite rest periods;
- d. Taken illegal deductions from the bonuses and/or commissions of Plaintiff DANIEL J. RUBIO;
- e. Failed to maintain accurate records for Plaintiff DANIEL J. RUBIO pursuant to Labor Code §226(a); and
- f. Failed to pay Plaintiff DANIEL J. RUBIO pursuant to Labor Code §203.

PLAINTIFF JOHN HICKS

11. Plaintiff JOHN HICKS is an individual over the age of eighteen (18) and is now and/or at all times mentioned in this Complaint was a resident of the State of California.

///

///



1           12. Plaintiff JOHN HICKS has worked for Defendants as a California-based Loan  
2 Officer at a New Century office in Orange County, California, and the Long Beach branch  
3 office in Los Angeles County, California.

4           13. Plaintiff JOHN HICKS seeks unpaid wages, penalties and other compensation  
5 from Defendants because Defendants improperly:

- 6           a. Failed to pay Plaintiff JOHN HICKS overtime pay for all overtime hours  
7 worked;
- 8           b. Deprived Plaintiff JOHN HICKS of the requisite meal periods;
- 9           c. Failed to authorize and permit Plaintiff JOHN HICKS the requisite rest  
10 periods;
- 11           d. Taken illegal deductions from the bonuses and/or commissions of  
12 Plaintiff JOHN HICKS;
- 13           e. Failed to maintain accurate records for Plaintiff JOHN HICKS pursuant  
14 to Labor Code §226(a); and
- 15           f. Failed to pay Plaintiff JOHN HICKS pursuant to Labor Code §203.

16 PLAINTIFF DAVID VIZCARRA

17           14. Plaintiff DAVID VIZCARRA is an individual over the age of eighteen (18) and  
18 is now and/or at all times mentioned in this Complaint was a resident of the State of  
19 California.

20           15. Plaintiff DAVID VIZCARRA has worked for Defendants as a California-based  
21 Loan Officer at the Sacramento branch office of New Century in Sacramento County,  
22 California.

23           16. Plaintiff DAVID VIZCARRA seeks unpaid wages, penalties and other  
24 compensation from Defendants because Defendants improperly:

- a. Failed to pay Plaintiff DAVID VIZCARRA overtime pay for all overtime hours worked;
- b. Deprived Plaintiff DAVID VIZCARRA of the requisite meal periods;
- c. Failed to authorize and permit Plaintiff DAVID VIZCARRA the requisite rest periods;
- d. Taken illegal deductions from the bonuses and/or commissions of Plaintiff DAVID VIZCARRA;
- e. Failed to maintain accurate records for Plaintiff DAVID VIZCARRA pursuant to Labor Code §226(a); and
- f. Failed to pay Plaintiff DAVID VIZCARRA pursuant to Labor Code §203.

DEFENDANT, NEW CENTURY MORTGAGE CORPORATION

17. Defendant NEW CENTURY MORTGAGE CORPORATION is now and/or at all times mentioned in this Complaint was a California corporation and the owner and operator of an industry, business and/or facility licensed to do business and actually doing business in the State of California, as a mortgage lender.

DOES 1 TO 100, INCLUSIVE

18. DOES 1 to 100, inclusive are now, and/or at all times mentioned in this Complaint were licensed to do business and/or actually doing business in the State of California.

19. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to 100, inclusive and for that reason, DOES 1 to 100 are sued under such fictitious names pursuant to California Code of Civil Procedure (“CCP”) §474.

///

1        20. Plaintiffs will seek leave of court to amend this Complaint to allege such names  
2 and capacities as soon as they are ascertained.

3 ALL DEFENDANTS

4        21. Defendants, and each of them, are now, and/or at all times mentioned in this  
5 Complaint were in some manner legally responsible for the events, happenings and  
6 circumstances alleged in this Complaint.

7        22. Defendants proximately caused Plaintiffs, all others similarly situated and the  
8 general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or  
9 damages alleged in this Complaint.

10       23. Defendants, and each of them, are now, and/or at all times mentioned in this  
11 Complaint were the agents, servants and/or employees of some or all other Defendants, and  
12 vice-versa, and in doing the things alleged in this Complaint, Defendants are now and/or at  
13 all times mentioned in this Complaint were acting within the course and scope of that  
14 agency, servitude and/or employment.

15       24. Defendants, and each of them, are now, and/or at all times mentioned in this  
16 Complaint were members of, and/or engaged in, a joint venture, partnership and common  
17 enterprise, and acting within the course and scope of, and in pursuance of said joint venture,  
18 partnership and common enterprise.

19       25. Defendants, and each of them, at all times mentioned in this Complaint  
20 concurred and contributed to the various acts and omissions of each and every one of the  
21 other Defendants in proximately causing the complaints, injuries and/or damages alleged in  
22 this Complaint.

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24 ///

26. Defendants, and each of them, at all times mentioned in this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts and/or omissions alleged in this Complaint.

27. Defendants, and each of them, at all times mentioned in this Complaint aided and abetted the acts and omissions of each and every one of the other Defendants thereby proximately causing the damages alleged in this Complaint.

### III.

## **JURISDICTION AND VENUE**

28. The United States District Court, Central District of California, Santa Ana Division has jurisdiction in this matter because this matter was originally filed in Los Angeles Superior Court but was Removed by Defendants to Federal Court and thereafter assigned to this division.

29. Venue is proper in the Central District of California under 28 USC §1391(a)(2) because a substantial part of the events or omissions giving rise to the claims herein occurred in this District. Defendants operate numerous offices and employ numerous class members in the counties within the Central District of California.

#### IV.

## CLASS ACTION ALLEGATIONS

30. FRCP 23(a) states: “One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.”

1        31. Plaintiffs bring this suit as a class action pursuant to FRCP 23, on behalf of  
2 individuals who are entitled to the monies unlawfully withheld by Defendants.

3        32. The putative classes Plaintiffs will seek to certify are currently composed of  
4 and defined as follows:

- 5            a. All of Defendants' California-based employees during the appropriate  
6 time period with the title "Loan Officer" (as defined, supra) who  
7 Defendants failed to pay overtime pay for all overtime hours worked and  
8 who seek unpaid wages from Defendants (hereinafter, the "Overtime  
9 Class");
- 10           b. All California-based employees during the appropriate time period with  
11 the title "Loan Officer" (as defined, supra) whose compensation from  
12 Defendants was at least half commission pay and to whom Defendants  
13 failed to pay overtime wages for all overtime hours worked (hereinafter,  
14 the "FLSA Class");
- 15           c. All of Defendants' California-based employees during the appropriate  
16 time period with the title "Loan Officer" (as defined, supra) from who  
17 Defendants improperly deprived the requisite meal periods and who seek  
18 penalties from Defendants (hereinafter, the "Meal Period Class");
- 19           d. All of Defendants' California-based employees during the appropriate  
20 time period with the title "Loan Officer" (as defined, supra) for who  
21 Defendants improperly failed to authorize and permit requisite rest  
22 periods and who seek penalties from Defendants (hereinafter, the "Rest  
23 Period Class");

24 ///

e. All of Defendants' California-based employees during the appropriate time period with the title "Loan Officer" (as defined, supra) from who Defendants made improper deductions prior to calculating bonuses and/or commissions for said employees (hereinafter, the "Deductions Class");

f. All of Defendants' California-based employees during the appropriate time period with the title "Loan Officer" (as defined, supra) for who Defendants did not maintain accurate records pursuant to Labor Code §226(a) and who seek penalties from Defendants pursuant to Labor Code §226(e) (hereinafter, the "Illegal Records Class"); and

g. All of Defendants' California-based employees during the appropriate time period with the title "Loan Officer" (as defined, supra) who Defendant willfully failed to pay their wages after they were discharged or quit and who seek unpaid wages from Defendants pursuant to Labor Code §203 (hereinafter, the "LC 203 Class").

33. The Overtime Class, FLSA Class, Meal Period Class, Rest Period Class, Deductions Class, Illegal Records Class and LC 203 Class are hereinafter collectively referred to as the "Classes."

34. Throughout discovery in this litigation, Plaintiffs may find it appropriate and/or necessary to amend the definition of the Classes. In any event, Plaintiffs will formally define and designate a class definition at such time when Plaintiffs seek to certify the Classes alleged herein.

35. Numerosity (FRCP 23(a)(1)): The potential quantity of members of the Classes as defined is so numerous that joinder of all members would be unfeasible and impractical.

1 The disposition of their claims through this class action will benefit both the parties and this  
 2 Court. The quantity of members of the Classes is unknown to Plaintiffs at this time,  
 3 however, it is estimated that each of the Classes numbers greater than 100 individuals. The  
 4 quantity and identity of such membership is readily ascertainable via inspection of  
 5 Defendants' records.

6 36. Questions of Law or Fact Common To The Classes (FRCP 23(a)(2)): There are  
 7 common questions of law and/or fact as to the members of the Classes which predominate  
 8 over questions affecting only individual members of the Classes, including, without  
 9 limitation:

- 10 a. Whether the members of the Overtime Class and FLSA Class were  
 11 expected to and/or mandated to regularly work overtime;
- 12 b. Whether Defendants had a common policy, practice and/or procedure to  
 13 deny payment of overtime to the Overtime Class and FLSA Class;
- 14 c. Whether Defendants had a common policy, practice or procedure to  
 15 prohibit the Overtime Class and FLSA Class from recording over 8  
 16 hours per day, regardless of the number of hours worked by the  
 17 Overtime Class and FLSA Class;
- 18 d. The correct method of calculating the regular rate for the Overtime Class  
 19 and FLSA Class;
- 20 e. The correct method of calculating unpaid overtime pay;
- 21 f. Whether Defendants failed and continue to fail to provide meal periods  
 22 to the members of the Meal Period Class in violation of the Labor Code  
 23 and IWC Wage Order No. 2, §11;

24 ///

- 1 g. Whether Defendants failed and continue to fail to authorize and permit
- 2 members of the Rest Period Class to take rest periods in violation of the
- 3 Labor Code and IWC Wage Order No. 2, §12;
- 4 h. Whether Defendants make improper deductions prior to calculating
- 5 bonuses and/or commissions;
- 6 i. Whether Defendants had a common policy, procedure and/or practice to
- 7 deny commission and/or bonus compensation to the Deductions Class, if
- 8 certain loan fees were waived;
- 9 j. Whether Defendants failed to keep adequate records for the members of
- 10 the Illegal Records Class pursuant to Labor Code 226(a) (and the
- 11 consequence for such statutory violations if Defendants did not);
- 12 k. Whether the members of the LC 203 Class are entitled to penalties
- 13 pursuant to Labor Code §203;
- 14 l. The correct statute of limitations for the claims of the members of the
- 15 Classes;
- 16 m. Whether Defendants' conduct constitutes unfair competition within the
- 17 meaning of B&PC §17200 and §17203;
- 18 n. Whether Defendants' conduct constitutes unfair business practices
- 19 within the meaning of B&PC §17200 and §17203;
- 20 o. Whether the members of the Classes are entitled to compensatory
- 21 damages, and if so, the means of measuring such damages;
- 22 p. Whether the members of the Classes are entitled to injunctive relief;
- 23 q. Whether the members of the Classes are entitled to restitution;
- 24 r. Whether Defendants are liable for pre-judgment interest; and



s. Whether Defendants are liable for attorneys' fees and costs.

37. Typicality (FRCP 23(a)(3)): The claims of Plaintiffs DANIEL J. RUBIO, JOHN HICKS and DAVID VIZCARRA are typical of the claims of all members of the Classes they respectively seek to represent because all members of the Classes sustained injuries and damages arising out of Defendants' common course of conduct in violation of law and the injuries and damages of all members of the Classes were caused by Defendants' wrongful conduct in violation of law, as alleged herein.

38. Adequacy (FRCP 23(a)(4)): Plaintiffs DANIEL J. RUBIO, JOHN HICKS and DAVID VIZCARRA:

- a. is an adequate representative of the Classes they seek to represent;
- b. will fairly protect the interests of the members of the Classes;
- c. has no interests antagonistic to the members of the Classes; and
- d. will vigorously pursue this suit via attorneys who are competent, skilled and experienced in litigating matters of this type.

39. Superiority (FRCP 23(b)): This action is maintainable as a class action because the prerequisites of FRCP 23(a) are satisfied as outlined above, and in addition:

- a. California has a public policy which encourages the use of the class action device;
- b. By establishing a technique whereby the claims of many individuals can be resolved at the same time, the class suit both eliminates the possibility of repetitious litigation and provides small claimants with a method of obtaining redress for claims which would otherwise be too small to warrant individual litigation;

///

- c. This case involves a small number of large corporate Defendants and a large number of individual Class members with many relatively small claims and common issues of law and fact;
- d. If each individual member of each of the Classes was required to file an individual lawsuit, the large corporate Defendants would necessarily gain an unconscionable advantage because Defendants would be able to exploit and overwhelm the limited resources of each individual member of the Classes with Defendants' vastly superior financial and legal resources;
- e. Requiring each individual member of each of the Classes to pursue an individual remedy would also discourage the assertion of lawful claims by the members of the Classes who would be disinclined to pursue an action against Defendants because of an appreciable and justifiable fear of retaliation and permanent damage to their lives, careers and well-being;
- f. Proof of a common business practice or factual pattern, of which the members of the Classes experienced, is representative of the Classes herein and will establish the right of each of the members of the Classes to recover on the causes of action alleged herein;
- g. Absent class treatment, the prosecution of separate actions by the individual members of the Classes, even if possible, would likely create:
  - i) a substantial risk of each individual plaintiff presenting in separate, duplicative proceedings the same or essentially similar arguments and evidence, including expert testimony;

- ii) a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants;
- iii) inconsistent or varying verdicts or adjudications with respect to the individual members of the Classes against Defendants; and
- iv) potentially incompatible standards of conduct for Defendants;
- v) potentially incompatible legal determinations with respect to individual members of the Classes which would, as a practical matter, be dispositive of the interest of the other members of the Classes who are not parties to the adjudications or which would substantially impair or impede the ability of the members of the Classes to protect their interests.

h. The claims of the individual members of the Classes are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto; and

i. Courts seeking to preserve efficiency and other benefits of class actions routinely fashion methods to manage any individual questions. The Supreme Court of California urges trial courts to be procedurally innovative in managing class actions, which have an obligation to consider the use of innovative procedural tools to certify a manageable class.

40. Whether each member of the Classes might be required to ultimately justify an individual claim does not preclude maintenance of a class action. Collins v. Rocha (1972) 7 Cal.3d 232, 238.

///

V.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

**RECOVERY OF UNPAID OVERTIME WAGES AND PENALTIES**

**(On Behalf of the Overtime Class)**

**(Against All Defendants)**

41. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

42. Labor Code §204 establishes the fundamental right of all employees in the State of California to be paid wages, including straight time and overtime, in a timely fashion for their work.

43. Labor Code §510(a) provides that "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."

44. Labor Code §510(a) further provides that "Any work in excess of 12 hours in one day shall be compensated shall be compensated at the rate of no less than twice the regular rate of pay for an employee."

45. Labor Code §510(a) further provides that "[A]ny work in excess of eight hours on any seventh day of a workweek shall be compensate at the rate of no less than twice the regular rate of pay of an employee.

///

///

1       46. Pursuant to Labor Code §1198, it is unlawful to employ persons for longer than  
2 the hours set by the Industrial Welfare Commission or under conditions prohibited by Wage  
3 Orders.

4       47. Defendants, as a matter of established company policy, procedure and/or  
5 practice, at each and every one of the individual facilities owned and/or operated by  
6 Defendants, consistently:

- 7           a. Administered a uniform company policy and practice regarding the  
8 duties and responsibilities of the members of the Overtime Class;
- 9           b. Administered a uniform company policy and practice regarding the  
10 payment of wages to the members of the Overtime Class;
- 11           c. Had and/or have numerous manuals, letters, correspondence, policy  
12 handbooks and the like which taken together constitute, created or  
13 comprise, a written contract for employment with each of the members  
14 of the Overtime Class;
- 15           d. Required the members of the Overtime Class to work in excess of eight  
16 (8) hours per workday and/or in excess of forty (40) hours per workweek  
17 without paying straight time or overtime compensation for such excess  
18 hours worked;
- 19           e. Paid the members of the Overtime Class with no straight time and/or  
20 overtime compensation paid for work accomplished in excess of eight  
21 (8) hours per day and/or forty (40) hours per week;
- 22           f. Failed to keep accurate records of the actual hours worked by the  
23 members of the Overtime Class;

24 ///

1 g. Did not employ the members of the Overtime Class using: i) an  
2 alternative workweek schedule adopted pursuant to Labor Code §511; ii)  
3 an alternative workweek schedule adopted pursuant a collective  
4 bargaining agreement pursuant to Labor Code §514; or iii) an alternative  
5 workweek schedule which is inapplicable here pursuant to Labor Code  
6 §554;

7 h. Disseminated false information throughout Defendants' facilities and  
8 amongst Defendants' employees reciting that, under Defendants' labor  
9 policies and practices and under California law, the members of the  
10 Overtime Class were not entitled to overtime compensation.

11 48. Defendants' pattern, practice and uniform administration of corporate policy  
12 regarding illegal employee compensation as described herein is unlawful and creates an  
13 entitlement, pursuant to Labor Code §218 and §1194(a), to recovery by the members of the  
14 Overtime Class, in a civil action, for the unpaid balance of the full amount of the straight  
15 time compensation and overtime premiums owing, including interest thereon, reasonable  
16 attorneys' fees, and costs of suit.

17 49. Defendant's policy and practice prohibited the Overtime Class from recording  
18 over 8 hours per day or 40 hours per week, even though the Overtime Class was required  
19 and expected to work substantially more hours.

20 50. Pursuant to Labor Code §218.6 and §1194(a) and CC §3287(b) and §3289, the  
21 members of the Overtime Class seek recovery of pre-judgment interest on all amounts  
22 recovered herein.

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1        51. Pursuant to Labor Code §218.5 and §1194, the members of the Overtime Class  
2 request that the Court award reasonable attorneys' fees and costs incurred by them in this  
3 action.

4                                    **SECOND CAUSE OF ACTION**

5                    **FAILURE TO PAY OVERTIME WAGES PURSUANT TO THE FLSA**

6                                    **(On Behalf of the FLSA Class)**

7                                    **(Against All Defendants)**

8        52. Plaintiffs incorporate by reference and reallege each and every one of the  
9 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully  
10 set forth herein.

11        53. The Federal Fair Labor Standards Act, 29 U.S.C. §207(a)(1) provides in  
12 pertinent part that "...[N]o employer shall employ any of his employees, who in any  
13 workweek is employed in an enterprise engaged in commerce or in the production of goods  
14 for commerce, for a workweek longer than forty hours unless such employee receives  
15 compensation for his employment in excess of the hours above specified at a rate not less  
16 than one and one-half times the regular rate at which he is employed."

17        54. The Federal Fair Labor Standards Act, 29 U.S.C. §207(i) provides in pertinent  
18 part that "No employer shall be deemed to have violated subsection (a) of this section  
19 [failing to pay overtime wages for overtime work] by employing any employee *of a retail*  
20 *or service establishment* for a workweek in excess of the applicable workweek specified  
21 therein, if: (1) the regular rate of pay of such employee is in excess of one and one-half  
22 times the minimum hourly rate applicable to him under section 206 of this title; and (2)  
23 more than half his compensation for a representative period (not less than one month)  
24 represents commissions on goods or services." (emphasis added).

1        55. Thus, an employee is exempt from overtime pay under federal law only if he or  
2 she: 1) earns at least one and one half times the minimum wage for all hours worked, 2)  
3 receives over half of his or her compensation from commissions and 3) *is employed by a*  
4 *retail or service establishment.*

5        56. As stated by the United States Department of Labor at 29 C.F.R. §779.316, "It  
6 is plain, therefore, that the term "retail or service establishment" as used in the Act does not  
7 encompass establishments in industries lacking a "retail concept." Such establishments not  
8 having been traditionally regarded as retail or service establishments cannot under any  
9 circumstances qualify as a "retail or service establishment" within the statutory definition of  
10 the Act, since they fail to meet the first requirement of the statutory definition. Industry  
11 usage of the term "retail" is not in itself controlling in determining when business  
12 transactions are retail sales under the Act. Judicial authority is quite clear that there are  
13 certain good and services which can never be sold at retail."

14        57. 29 C.F.R. §779.317 states in pertinent part: "There are types of establishments  
15 in industries where it is not readily apparent whether a retail concept exists and whether or  
16 not the exemption can apply. It, therefore, is not possible to give a complete list of the types  
17 of establishments that have no retail concept. It is possible, however, to give a partial list of  
18 establishments to which the retail concept does not apply. This list is as follows: ... Loan  
19 Offices."

20        58. 29 C.F.R. §541.118(a) provides in pertinent part "An employee will be  
21 considered to be paid "on a salary basis" within the meaning of the regulations if under his  
22 employment agreement he regularly receives each pay period on a weekly, or less frequent  
23 basis, a predetermined amount constituting all or part of his compensation, which amount is  
24 not subject to reduction because of variations in the quality or quantity of work performed.



1 Subject to the exceptions provided below, the employee must receive his full salary for any  
2 week in which he performs any work without regard to the number of days or hours  
3 worked.”

4 59. The members of the FLSA Class are not exempt from overtime under any  
5 “white collar” exemption under either federal or California law because their compensation  
6 is commission-based and they are not paid “on a salary basis.”

7 60. Therefore, as employees of a Loan Office whose wages are not paid on a salary  
8 basis, the members of the FLSA Class cannot be exempt from overtime pay.

9 70. Defendants, as a matter of established company policy and procedure, at each  
10 and every one of the individual facilities owned and/or operated by Defendants,  
11 consistently:

12 a. Administered a uniform company policy and practice regarding the  
13 duties and responsibilities of the members of the FLSA Class;

14 b. Administered a uniform company policy and practice regarding the  
15 payment of wages to the members of the FLSA Class;

16 c. Scheduled to work and in fact required the members of the FLSA Class  
17 to work in excess of eight (8) hours per workday and/or in excess of forty (40)  
18 hours per workweek; and

19 d. Failed to pay the members of the FLSA Class for all work accomplished  
20 in excess of forty (40) hours per week.

21 71. B&PC §17200 provides in pertinent part “[U]nfair competition shall mean  
22 and include any unlawful, unfair or fraudulent business act...”.

23 ///

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1       72. B&PC §17205 provides that unless otherwise expressly provided, the remedies  
2 or penalties provided for unfair competition “are cumulative to each other and to the  
3 remedies or penalties available under all other laws of this state.”

4       73. B&PC §17204 provides that an action for any relief from unfair competition  
5 may be prosecuted by any person who has suffered injury in fact and has lost money or  
6 property as a result of such unfair competition.

7       74. Defendants’ acts as described herein are unlawful, unfair and fraudulent  
8 business acts or practices prohibited by B&PC §17200, thereby depriving Plaintiffs and all  
9 others similarly situated of the minimum working standards and conditions due to them  
10 under California labor laws and the IWC Wage Order(s), as specifically described herein.

11       75. Defendants have engaged in unfair business practices in California by  
12 practicing, employing and utilizing the employment practices outlined in the preceding  
13 paragraphs, specifically, by requiring employees to perform the labor services complained  
14 of herein without the requisite compensation.

15       76. Defendants’ use of such practices constitutes an unfair business practice, unfair  
16 competition and provides an unfair advantage over Defendants’ competitors.

17       78. Plaintiffs have suffered injury in fact and have lost money or property as a  
18 result of such unfair competition.

19       79. Plaintiffs, on behalf of themselves and all others similarly situated, seek full  
20 restitution from Defendants, as necessary and according to proof, to restore any and all  
21 monies withheld, acquired and/or converted by Defendants by means of the unfair practices  
22 complained of herein.

23 ///

24 ///

80. Further, if Defendants are not enjoined from the conduct set forth above, Defendants will continue to practice, employ and utilize the employment practices outlined in the preceding paragraphs.

81. Therefore, Plaintiffs request that the Court issue a preliminary and permanent injunction prohibiting Defendants from engaging in the foregoing conduct.

82. Plaintiffs, on behalf of themselves and all others similarly situated, seek the appointment of a receiver, as necessary, to establish the total monetary relief sought from Defendants.

**THIRD CAUSE OF ACTION**  
**FAILURE TO PROVIDE MEAL PERIODS**  
**(On Behalf of the Meal Period Class)**  
**(Against All Defendants)**

83. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

84. Labor Code §226.7(a) provides that "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

85. Labor Code §512 provides that "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee."

///

1        86. Labor Code §512 further provides that “An employer may not employ an  
2 employee for a work period of more than 10 hours per day without providing the employee  
3 with a second meal period of not less than 30 minutes, except that if the total hours worked  
4 is no more than 12 hours, the second meal period may be waived by mutual consent of the  
5 employer and the employee only if the first meal period was not waived.”

6        87. Labor Code §516 provides that the Industrial Welfare Commission may adopt  
7 or amend working condition orders with respect to meal periods for any workers in  
8 California consistent with the health and welfare of those workers.

9        88. IWC Wage Order No. 2, §11(C) states: “Unless the employee is relieved of all  
10 duty during a 30 minute meal period, the meal period shall be considered an “on duty “  
11 meal period and counted as time worked. An “on duty” meal period shall be permitted only  
12 when the nature of the work prevents an employee from being relieved of all duty and when  
13 by written agreement between the parties an on-the-job paid meal period is agreed to. The  
14 written agreement shall state that the employee may, in writing, revoke the agreement at any  
15 time.”

16        89. IWC Wage Order No. 2, §11(D) states: “If an employer fails to provide an  
17 employee a meal period in accordance with the applicable provisions of this order, the  
18 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of  
19 compensation for each workday that the meal period is not provided.

20        90. The members of the Meal Period Class consistently worked over five (5) hours  
21 per shift and therefore were entitled to a meal period of not less than thirty (30) minutes  
22 prior to exceeding five (5) hours of employment.

23        91. The members of the Meal Period Class did not waive their meal periods, by  
24 mutual consent with Defendants or otherwise.

93. Defendants failed to comply with the required meal periods and incorrectly considered the members of the Meal Period Class to be exempt from meal period requirements established by Labor Code §226.7, §512 and §516 and IWC Wage Order No. 2, §11.

#### FOURTH CAUSE OF ACTION

**(On Behalf of the Rest Period Class)**

95. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

1        97. Labor Code §516 provides that the Industrial Welfare Commission may adopt  
2 or amend working condition orders with respect to break periods for any workers in  
3 California consistent with the health and welfare of those workers.

4        98. IWC Wage Order No. 2, §12(A) states: "Every employer shall authorize and  
5 permit all employees to take rest periods, which insofar as practicable shall be in the middle  
6 of each work period. The authorized rest period time shall be based on the total hours  
7 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction  
8 thereof. However, a rest period need not be authorized for employees whose total daily  
9 work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be  
10 counted as hours worked for which there shall be no deduction from wages.

11        99. IWC Wage Order No. 2, §12(B) states: "If an employer fails to provide an  
12 employee a rest period in accordance with the applicable provisions of this order, the  
13 employer shall pay the employee one (1) hour of pay at the employee's regular rate of  
14 compensation for each workday that the rest period is not provided.

15        100. The members of the Rest Period Class consistently worked over four (4) hours  
16 per shift and therefore were entitled to a rest period of not less than ten (10) minutes prior to  
17 exceeding four (4) hours of employment.

18        101. Defendants failed to authorize and permit the required rest periods and  
19 incorrectly considered the members of the Rest Period Class to be exempt from meal period  
20 requirements established by Labor Code §226.7 and §516 and IWC Wage Order No. 2, §12.

21        102. Pursuant to IWC Wage Order No. 2, §12(B) and Labor Code §226.7(b) (which  
22 requires, in the event that "an employer fails to provide an employee a meal or rest period in  
23 accordance with an applicable order of the industrial Welfare Commission, the employer  
24 shall the employee one additional hour of pay at the employee's regular rate of

1 compensation for each work day that the meal or rest period is not provided”), the members  
 2 of the Rest Period Class are entitled to penalties in an amount equal to one (1) hour of  
 3 wages per missed rest period, in a sum to be proven at trial.

#### 4 **FIFTH CAUSE OF ACTION**

#### 5 **ILLEGAL DEDUCTIONS**

6 **(On Behalf of the Deductions Class)**

7 **(Against All Defendants)**

8 103. Plaintiffs incorporate by reference and reallege each and every one of the  
 9 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully  
 10 set forth herein.

11 104. Labor Code §221 states: “It shall be unlawful for any employer to collect or  
 12 receive from an employee any part of wages theretofore paid by said employer to said  
 13 employee.”

14 105. Labor Code §223 states: “Where any statute or contract requires an employer  
 15 to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage  
 16 while purporting to pay the wage designated by statute or by contract.”

17 106. As part of a uniform policy and procedure regarding sales, commissions and/or  
 18 bonuses, Defendants improperly adjust, reduce and/or negate the commissions paid to  
 19 members of the Deductions Class, if any fees are waived.

20 107. Further, as part of a uniform policy and procedure regarding sales,  
 21 commissions and/or bonuses, Defendants improperly adjust, reduce and/or negate the  
 22 commissions and/or bonuses on said loans earned by the members of the Deductions Class,  
 23 despite the fact that Defendants have benefited and profited from said loans.

24 ///



1        108. Defendants attempted to bypass and circumvent its obligations by keeping  
2 these commission and/or bonus forfeiture terms hidden from the members of the Deductions  
3 Class upon hire, and by failing and refusing to record and report all commissions and  
4 bonuses earned and/or deducted.

5        109. Defendants wrongfully withheld money from the members of the Deductions  
6 Class in an amount equal to the commissions and/or bonuses forfeited and retained by  
7 Defendants.

8        110. The members of the Deductions Class have therefore been injured, and are  
9 entitled to damages and restitution in an amount not less than the amount of commission  
10 and/or bonus wages wrongfully withheld by Defendants, according to proof at trial.

11        111. The conduct of Defendants as alleged herein is inequitable, unfair and over-  
12 reaching, and has resulted in Defendants having profited unfairly and having been unjustly  
13 enriched.

14        112. Pursuant to Labor Code §218.5 and §1194, the members of the Deductions  
15 Class request that the Court award reasonable attorneys' fees and costs incurred by them in  
16 this action.

17                                **SIXTH CAUSE OF ACTION**  
18                                **ILLEGAL RECORD KEEPING**  
19                                **(On Behalf of the Illegal Records Class)**  
20                                **(Against All Defendants)**

21        113. Plaintiffs incorporate by reference and reallege each and every one of the  
22 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully  
23 set forth herein.

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1        114. Labor Code §226 requires an employer to furnish its employees with an  
2 accurate itemized statement in writing showing, among other things, (1) gross wages  
3 earned, (2) total hours worked by each respective individual, (3) all deductions, (4) net  
4 wages earned and/or (5) all applicable hourly rates in effect during each respective pay  
5 period and the corresponding number of hours worked at each hourly rate by each  
6 respective individual.

7        115. Therefore, pursuant to Labor Code §226, California employers are required to  
8 maintain accurate records pertaining to the total hours worked for Defendants by the  
9 members of the Illegal Records Class, including but not limited to, beginning and ending of  
10 each work period, meal period and rest period, the total daily hours worked, and the total  
11 hours worked per pay period and applicable rates of pay.

12        116. The members of the Illegal Records Class include all of Defendants' non-  
13 exempt employees, including those who Defendants have misclassified as exempt from  
14 overtime.

15        117. As a pattern and practice, in violation of Labor Code §226(a), Defendants did  
16 not furnish each of the members of the Illegal Records Class with an accurate itemized  
17 statement in writing showing (1) gross wages earned, (2) total hours worked by each  
18 respective individual, (3) all deductions, (4) net wages earned and/or (5) all applicable  
19 hourly rates in effect during each respective pay period and the corresponding number of  
20 hours worked at each hourly rate by each respective individual.

21        118. As a pattern and practice, in violation of Labor Code §226(a), Defendants did  
22 not maintain accurate records pertaining to the total hours worked for Defendants by the  
23 members of the Illegal Records Class, including but not limited to, beginning and ending of  
24

1 each work period, meal period and rest period, the total daily hours worked, and the total  
2 hours worked per pay period and applicable rates of pay.

3 119. Plaintiffs and all others similarly situated have suffered injury as a result of  
4 Defendants' failure to maintain accurate records for the members of the Illegal Records  
5 Class in that the members of the Illegal Records Class were not timely provided written  
6 accurate itemized statements showing all requisite information, including but not limited to  
7 total hours worked by the employee, net wages earned and all applicable hourly rates in  
8 effect during the pay period and the corresponding number of hours worked at each hourly  
9 rate, in violation of Labor Code §226, such that the members of the Illegal Records Class  
10 were misled by Defendants as to the correct information regarding various items, including  
11 but not limited to total hours worked by the employee, net wages earned and all applicable  
12 hourly rates in effect during the pay period and the corresponding number of hours worked  
13 at each hourly rate.

14 120. Pursuant to Labor Code §226(e), the members of the Illegal Records Class are  
15 entitled to penalties as follows:

- 16 a. Fifty dollars (\$50.00) per employee for the initial pay period in which a  
17 violation occurs; and  
18 b. One hundred dollars (\$100.00) per employee for each violation in a  
19 subsequent pay period.

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**SEVENTH CAUSE OF ACTION**  
**VIOLATIONS OF LABOR CODE §203**  
**(On Behalf of the LC 203 Class)**  
**(Against All Defendants)**

121. Plaintiffs incorporate by reference and reallege each and every one of the allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully set forth herein.

122. Labor Code §203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code §§201, 201.5, 202 and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than thirty (30) days.

123. Defendants had a consistent and uniform policy, practice and procedure of willfully failing to pay the earned and unpaid wages of Defendants' former employees, including, but not limited to, straight time, overtime, vacation time, and other wages earned and remaining uncompensated according to amendment, or proof.

124. The members of the LC 203 Class are no longer employed by Defendants. They were either discharged from or quit Defendants' employ.

125. Defendants willfully failed to pay the members of the LC 203 Class a sum certain at the time of their termination or within seventy-two (72) hours of their resignation, and failed to pay those sums for thirty (30) days thereafter.

126. Defendants' willful failure to pay wages to the members of the LC 203 Class violates Labor Code §203 because Defendants knew wages were due to the members of the LC 203 Class, but Defendants failed to pay them.

1        127. Thus, the members of the LC 203 Class are entitled to penalties pursuant to  
 2 Labor Code §203, in the amount of each LC 203 Class members' daily wage multiplied by  
 3 thirty (30) days.

4                                    **EIGHTH CAUSE OF ACTION**  
 5                                    **UNFAIR BUSINESS PRACTICES**  
 6                                    **(On Behalf of Plaintiffs and the General Public)**  
 7                                    **(Against All Defendants)**

8        128. Plaintiffs incorporate by reference and reallege each and every one of the  
 9 allegations contained in the preceding and foregoing paragraphs of this Complaint as if fully  
 10 set forth herein.

11        129. Plaintiffs also bring this action for the benefit of the public, who are entitled to  
 12 restitution of funds being improperly withheld by Defendants.

13        130. Defendants have engaged in unlawful, deceptive and unfair business practices  
 14 prohibited by B&PC §17200, including those set forth in the preceding and foregoing  
 15 paragraphs of the complaint, thereby depriving Plaintiffs and members of the general public  
 16 of the minimum working standards and conditions due to them under the California labor  
 17 laws and the Wage Orders as specifically described herein.

18        131. Defendants have engaged in unfair business practices in California by  
 19 practicing, employing and utilizing the employment practices outlined in the preceding  
 20 paragraphs, specifically, by requiring employees to perform the labor services complained  
 21 of herein without the proper compensation.

22        132. Defendants' use of such practices constitutes an unfair business practice, unfair  
 23 competition and provides an unfair advantage over Defendants' competitors.

24 ///

1 133. Plaintiffs, on behalf of the general public, seek full restitution from Defendants,  
2 as necessary and according to proof, to restore any and all monies withheld, acquired and/or  
3 converted by Defendants by means of the unfair practices complained of herein.

4 134. Further, if Defendants are not enjoined from the conduct set forth above,  
5 Defendants will continue to practice, employ and utilize the employment practices outlined  
6 in the preceding paragraphs.

7 135. Therefore, Plaintiffs request that the Court issue a preliminary and permanent  
8 injunction prohibiting Defendants from engaging in the foregoing conduct.

9 136. Plaintiffs, on behalf of the general public, seek the appointment of a receiver,  
10 as necessary, to establish the total monetary relief sought from Defendants.

11 VI.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs pray:

14 a. That the Court issue an Order certifying the Classes herein, appointing the  
15 named Plaintiff(s) as representative of all others similarly situated, and appointing the law  
16 firm(s) representing the named Plaintiff(s) as counsel for the members of the Classes;

17 As to the First Cause of Action for Unpaid Overtime Wages:

18 b. For damages, as set forth in Labor Code §1194(a) and IWC Wage Order No. 2  
19 regarding wages due and owing, according to proof;

20 c. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code  
21 §1194(a) and CC §3287;

22 d. For an award of reasonable attorneys' fees and costs pursuant to Labor Code  
23 §218.5 and Labor Code §1194(a);

24 ///

1 As to the Second Cause of Action for Restitution for Failure to Pay Overtime Wages:

2 e. For an accounting, under administration of Plaintiffs and/or the receiver and  
3 subject to Court review, to determine the amount to be returned by Defendants, and the  
4 amounts to be refunded to members of the Classes who are owed monies by Defendants;

5 f. For an Order requiring Defendants to identify each member of the FLSA  
6 Classes by name, home address, and home telephone number;

7 g. For an Order requiring Defendants to make full restitution and payment  
8 pursuant to California law;

9 h. For an Order for a preliminary and/or permanent injunction prohibiting  
10 Defendants from engaging in the acts complained of herein;

11 i. For the creation of an administrative process wherein each injured member of  
12 the Classes may submit a claim in order to receive his/her money;

13 j. For all other appropriate injunctive, declaratory and equitable relief;

14 k. For interest to the extent permitted by law;

15 l. For an award of attorneys' fees and costs incurred in the investigation, filing  
16 and prosecution of this action pursuant to B&PC §§17200, et seq.;

17 As to the Third Cause of Action for Failure to Provide Meal Periods:

18 m. For penalties amounting to one (1) hour of pay at the each employee's regular  
19 rate of compensation for each workday that a meal period was not provided;

20 As to the Fourth Cause of Action for Failure to Provide Paid Rest Periods:

21 n. For penalties amounting to one (1) hour of pay at the each employee's regular  
22 rate of compensation for each workday that a rest period was not provided;

23 As to the Fifth Cause of Action for Illegal Deductions:

24 o. For damages regarding wages due and owing, according to proof;

1 p. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code  
2 §1194(a) and CC §3287;

3 q. For an award of reasonable attorneys' fees and costs pursuant to Labor Code  
4 §218.5 and Labor Code §1194(a);

5 As to the Sixth Cause of Action for Illegal Record Keeping:

6 r. For penalties as authorized by Labor Code §226(e);

7 As to the Seventh Cause of Action for Penalties Pursuant to Labor Code §203:

8 s. For penalties as authorized by Labor Code §203;

9 As to the Eighth Cause of Action for Unfair Business Practices:

10 t. For an accounting, under administration of Plaintiffs and/or the receiver and  
11 subject to Court review, to determine the amount to be returned by Defendants, and the  
12 amounts to be refunded to members of the Classes who are owed monies by Defendants;

13 u. For an Order requiring Defendants to identify each of the members of the  
14 Classes by name, home address, and home telephone number;

15 v. For an Order requiring Defendants to make full restitution and payment  
16 pursuant to Labor Code §§200, et seq., §§500, et seq. and/or §1194;

17 w. For an Order for a preliminary and/or permanent injunction prohibiting  
18 Defendants from engaging in the acts complained of herein;

19 x. For the creation of an administrative process wherein each injured member of  
20 the Classes may submit a claim in order to receive his/her money;

21 y. For all other appropriate declaratory and equitable relief;

22 z. For interest to the extent permitted by law;

23 ///

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1       aa. For an award of attorneys' fees and costs incurred in the investigation, filing  
2 and prosecution of this action pursuant to CCP §1021.5, B&PC §§17200, et seq., Labor  
3 Code §1194 and/or any other applicable provision of law;

4 As to All Causes of Action:

5       bb. For such other and further relief as this Court may deem just and proper; and

6       cc. For reasonable attorneys' fees and costs incurred.

7                                   **VII.**

8                                   **DEMAND FOR JURY TRIAL**

9       Plaintiffs hereby demand trial of their claims by jury to the extent authorized by law.

10   Dated: December 20, 2006

LAW OFFICES OF KEVIN T. BARNES  
TRUSH LAW OFFICES

11  
12   By: 

Kevin T. Barnes, Esq.  
Gregg Lander, Esq.  
James M. Trush, Esq.  
Attorneys for Plaintiffs



**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of 18 years and not a party to this action. My business address is 5670 Wilshire Boulevard, Suite 1460, Los Angeles, California 90036-5627, which is located in Los Angeles County, where the service herein occurred.

On **December** \_\_\_\_, **2006**, I served the attached document(s) described as:

**FOURTH AMENDED COMPLAINT**

on the interested parties in this action, addressed as follows:

Greg S. Labate, Esq.  
Kimberly A. Letcher, Esq.  
SHEPPARD MULLIN RICHTER  
& HAMPTON LLP  
650 Town Center Drive, 4<sup>th</sup> Floor  
Costa Mesa, CA 92626-1993  
Tel.: (714) 513-5100  
Fax: (714) 513-5130  
Email: GLabate@sheppardmullin.com

James M. Trush, Esq.  
TRUSH LAW OFFICE  
695 Town Center Drive, Suite 700  
Costa Mesa, CA 92626-7187  
Tel.: (714) 384-6390  
Fax: (714) 384-6391  
Email: JTrush@earthlink.net

using the following service method(s):

**X** **VIA MAIL:** I deposited the document(s) to be served at a mailbox or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person(s) on whom the document(s) is/are to be served, at the office address as last given by that/those person(s), otherwise at that/those person(s)' place(s) of residence. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing stated herein.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on **December** \_\_\_\_, **2006**, at \_\_\_\_\_, California.

\_\_\_\_\_  
Cindy Rivas

**PROOF OF SERVICE**

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 695 Town Center Drive, Suite 700, Costa Mesa, California 92626-7187.

On December 21, 2006, I served, in the manner indicated below, the foregoing document described as:

**STIPULATION TO ALLOW FILING OF PLAINTIFFS' FOURTH AMENDED COMPLAINT, ORDER THEREON**

on the interested parties in this action by placing true copies thereof enclosed in sealed envelope(s) address as follows:

**SEE ATTACHED SERVICE LIST**

xxx (BY MAIL) I deposited such envelope(s) in the mail at Costa Mesa, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Costa Mesa, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

\_\_\_ (Facsimile) I caused the above-listed documents to be transmitted via facsimile to the offices of counsel for the interested parties listed above and received a confirmation report after sending the facsimile, indicating that the facsimile transmission was successfully completed.

\_\_\_ (BY PERSONAL SERVICE) I caused said documents to be personally served by hand to the parties and addresses listed above.

\_\_\_ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

XXX (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 21, 2006 at Costa Mesa, California.

Dee Davis  
By: Dee Davis

**Rubio v. New Century Mortgage Corporation**

**SERVICE LIST**

**Case No. CV06-811 CJC (AJWx)**

**Kevin T. Barnes, Esq. (#138477)**

**Gregg Lander, Esq. (#194018)**

**LAW OFFICES OF KEVIN T. BARNES**

**5670 Wilshire Boulevard, Suite 1460**

**Los Angeles, California 90036**

**Phone: (323) 549-9100**

**Fax: (323) 549-0101**

**Greg S. Labate, Esq.**

**Sheppard Mullin Richter & Hampton, LLP**

**650 Town Center Drive, 4<sup>th</sup> Floor**

**Costa Mesa, CA 92626-1993**

**(714 ) 513-5100; Fax (714) 513-5130**